

Bruxelles, 21 November 2023

Open letter to:

Member of the European Parliament Lara Wolters, Rapporteur for the Corporate Sustainability Due Diligence Directive proposal

Spanish Presidency of the Council,

President of the European Commission Ursula Von der Leyen,

Commissioner Didier Reynders,

Commissioner Thierry Breton

Civil Society Organisations' recommendations on responsible disengagement in the Corporate Due Sustainability Due Diligence Directive ("CSDDD"), Articles 7(5) and 8(8) (suspension and termination of business relationships)

When performing human rights and environmental due diligence, companies may find human and/or environmental impacts in value chains which cannot be effectively prevented or mitigated. In these cases, it is appropriate for companies to permanently or temporarily interrupt the relationship of concern with their business partners. In line with the UNGPs and OECD Guidelines, this document refers to this process as "responsible disengagement." Responsible disengagement aims to prevent negative impacts that may result from a company's withdrawal from a business relationship and addresses the risks associated with continuing relationships that are causing ongoing negative impacts. The CSDDD must address these risks by ensuring disengagement occurs in line with international standards.

In some cases, companies that find harm in their value chains disengage irresponsibly by "cutting and running" from their suppliers. This means not investing in remediation, not collaborating with their business partners to address ongoing impacts, not giving their business partners sufficient notice of their decision, or not addressing (preventing, mitigating and remediating) the negative impacts that might arise from their decision. This can lead to further damage as well as non-remediated impacts for communities, workers, and other rightsholders.¹ In other cases, businesses fail to disengage when they should, continuing commercial relationships in the absence of any prospect to prevent or cease the human or environmental rights adverse impacts.²

¹ The cases [Telenor exiting Myanmar](#), [Publish What You Pay Australia and 245 Myanmar CSOs vs. Myanmar Metals](#), [Glencore and European energy companies exiting Colombian coal](#), and [Lundin/Aker in South Sudan](#) all illustrate the negative impacts that can arise when disengagement occurs irresponsibly. Also see [ECCHR 2022](#), [Clean Clothes Campaign](#), [ECCHR. Public Eye and SOMO. 2022](#) (see: p. 25) and [SOMO 2020](#) for further proof of the need for disengagement that is in line with international standards.

² This is the case of companies that knowingly continue to source from the Uyghur Region in China, where the government is subjecting Uyghurs and other Turkic and Muslim-majority peoples to a

To be fully effective, the provision on disengagement must tackle both the risk of companies disengaging too hastily or irresponsibly (the “cut and run” approach), as well as the risk of companies not disengaging where necessary. In the former case, companies risk severely harming relevant stakeholders. In the latter, they risk fostering human and/or environmental human rights violations.

Our recommendations aim to ensure that Articles 7(5) and 8(8) address and prevent the aforementioned scenarios.

Recommendations:

1. Ensure termination and suspension of business relationships happen responsibly.
 - A. Specify disengagement should occur when there is no reasonable prospect for change in Articles 7(5) and 8(6), in line with the European Parliament’s text.
 - B. Mandate stakeholder engagement when terminating a business relationship in line with the UNGPs and OECD Guidelines, and the European Parliament Position’s Article 8d(5).
 - C. Address negative impacts of disengagement; in line with the UNGPs and OECD Guidelines and the European Parliament’s Position, Articles 7(5) and 8(6) must mandate companies to address separate negative impacts arising from disengagement.
 - D. Specify companies ought to remediate impacts they have already caused or contributed to in Articles 7(5) and 8(6).

2. Ensure there are no loopholes preventing disengagement in cases when it is necessary.
 - A. Remove the derogations to the duty to disengage proposed by the Council: delete derogations in the Council’s General Approach in Article 8(8), first subparagraphs (a), (b), and Article 8(9).
 - B. Require companies to swiftly disengage in the case of gross and systemic human rights abuses committed by States, by making the European Parliament’s recital 32 an operative part of the text.
 - C. Also apply articles 7(5) and 8(8) to companies that are directly linked to an impact by deleting the European Parliament’s limitation at Article 7(5).

system of state-imposed forced labour, in a context of [vastly documented](#) systemic human rights violations. Some companies in this case manipulated the concept of “last resort” to justify maintaining business relationships with [suppliers receiving labour transfers from the Uyghur region](#). See also: [Anti-Slavery International 2022](#), Section 8.

3. Require companies who decide to stay in business relationships where disengagement is not required (see Recommendation 2(B)) to continue addressing and mitigating human and environmental rights harm: clarify this in article 7(5)(b), in line with the European Parliament's position.

Recommendation 1. Ensure termination and suspension of business relationships happen responsibly

1A. Specify disengagement should occur when there is no reasonable prospect for change in Articles 7(5) and 8(6).

Requiring companies to ensure there is no reasonable prospect of change before disengaging entails that businesses must evaluate whether they have leverage over their business partners. If they lack leverage, businesses must attempt to increase it to effectively address, mitigate, or prevent the human and/or environmental rights impacts they have found in their value chains. This approach is in line with the UNGPs and OECD Guidelines, and it is essential to ensure companies will not simply push down on their suppliers the responsibility to uphold human and environmental rights standards. For this reason, it is also to frame disengagement as a last resort solution, with some important exceptions like cases of state-imposed forced labour (see Recommendation 2B).

1B. Mandate stakeholder engagement when terminating a business relationship at Article 8d(5)

The sudden disengagement of a company from a business relationship may engender new kinds of rights violations. This is apparent during the COVID-19 pandemic, where many brands and large corporations exited ongoing business relationships while neglecting their existing commitments to workers. The case of companies hastily divesting from fossil fuels without engaging with local communities during the process, thus causing further adverse environmental and economic impacts, also proves this point³. To avoid such practices, companies should be required to perform due diligence and meaningfully consult stakeholders in a timely manner when considering to disengage. This will allow them to address the negative impacts of their disengagement in an effective way informed by those affected by the decision (see Article 8d(3) in Parliament's text).

1C. Address negative impacts of disengagement at Articles 7(5) and 8(6)

A crucial step to avoid new and separate harms linked to disengagement is to incorporate, from the decision-making on, the prevention and mitigation of the negative impacts of disengagement itself. For example, the decision to hastily withdraw from operating in a

³ See: [SOMO](#) on energy companies exiting colombian coal; [Amnesty International 2023](#) and [Washington Post 2023](#) on Shell's divestment in Nigeria.

conflict-affected area can affect workers' safety⁴. Similar impacts of interrupting business relationships must be identified, assessed, prevented, and mitigated by companies, in line with the UNGPs and OECD Guidelines. Failing to do so can result in dire human rights impacts for affected stakeholders. The European Parliament's Position addresses this issue in Articles 7(5) and 8(6). Importantly, companies should draft an exit strategy which accounts for the prevention and mitigation of negative impacts arising from disengagement. The exit strategy should be made public to ensure that companies are accountable for minimising the adverse impacts of disengagement.

1D. Specify that companies ought to remediate impacts they have already caused or contributed to in Articles 7(5) and 8(6).

It should be clarified in Articles 7(5) and 8(6) that disengagement from specific contexts or business relationships does not hinder the obligation to provide remedies for adverse impacts companies have already caused or contributed to.

Recommendation 2: Ensure there are no loopholes preventing disengagement in cases when it is necessary

2A. Remove the derogations to the duty to disengage proposed by the Council.

Where companies lack the leverage to prevent and mitigate human rights impacts, and there is no reasonable prospect for change, responsible disengagement might be the appropriate response. We call for the removal of the derogations to the duty to disengage in Articles 8(8)(a) and (b), and Article 8(9) proposed by the Council. These would create dangerous loopholes allowing companies to stay in business relationships tainted with gross human rights violations.

Article 8(8) (a), as suggested by the Council, would prevent companies from disengaging if terminating the relationship would engender impacts more severe than those caused by the business activity itself. This framing risks allowing companies to remain in potentially harmful business relationships, while also exempting them from effectively addressing the negative impacts of these relationships. The risk of disengagement causing more harm than good should be addressed in another part of the text, namely in Article 7(5)(b) as done by the European Parliament, and not through an unconditional blanket ban.

Article 8(8) (b) gives companies the possibility not to disengage if no alternative business relationships exist and termination would cause substantial prejudice to the company. This derogation also ought to be removed. The private interests of companies cannot be subordinated to the duty to respect human rights. Systematic interpretation of the UNGPs

⁴ [ECCJ and Frank Bold 2022](#)

indicates that even when a business relationship is deemed crucial, the severity of the impact should be the primary consideration when assessing if disengagement is the appropriate course of action. The more severe the abuse, the more rapidly a company should assess the likelihood of change. Therefore, even for crucial business relationships, disengagement must be immediate in cases of gross and systematic abuse with no prospect of change.

Article 8(9) in the Council's General Approach ensures that companies who have entered commercial relationships before the transposition of the directive should not disengage from such relationships. This provision is contrary to the UNGPs and OECD Guidelines and a clear incentive for companies to rush into contracts in the 2-year window between the entry into force of the text and its transposition. It therefore needs to be removed.

2B. Require companies to swiftly disengage in the case of gross and systemic human rights abuses committed by States.

Importantly, there are specific scenarios where it is a practical impossibility for a business to undertake credible due diligence, because the human rights abuses are part of a policy imposed and enforced by the state, at all levels of government, and are widespread or systemic. This is the case of State-imposed forced labour. In cases where the State is committing gross and systemic human rights abuses, disengagement should not be a "last resort" measure. Rather, companies should be required to swiftly disengage. Recital 32 of the European Parliament recognises this, underlining that "*this Directive should ensure that companies terminate a business relationship where state-imposed forced labour is occurring.*" A subparagraph (c) should be added at Article 7(5) paragraph 1, making recital 32 operative, and warranting termination when the State is responsible for gross human rights violations.

2C. Also apply articles 7(5) and 8(8) to companies that are directly linked to an impact by deleting the European Parliament's limitation at Article 7(5).

The European Parliament's position limits the application of the duty to disengage to companies that cause or contribute to an impact. This limitation needs to be removed, as leaving it optional for companies that are directly linked to human and/or environmental rights harms disincentivises companies from disengaging from relationships where there is no reasonable prospect of improvement for ongoing human and environmental rights harm.

Recommendation 3. Require companies who decide to stay in business relationships, where disengagement is not required (see Recommendation 2(b) to continue addressing and mitigating human and environmental rights harm

Both the UNGPs and OECD Guidelines, and guidelines by the OHCHR clarify that if a company remains in a relationship with acknowledged and ongoing abuse, it should be able to demonstrate its own ongoing efforts to mitigate the impact, or else be subject to civil

liability in line with international guidelines. This should be clarified in Article 7(5)(b), in line with the Parliament's position.

Signatories:

Anti-Slavery International

Campaign For Uyghurs

Clean Clothes Campaign

Fundación Libera contra la Trata de Personas y la Esclavitud en Todas sus Formas

Freedom United

Responsible Sourcing Network

Social Awareness and Voluntary Education

Uzbek Forum for Human Rights

Uyghur Human Rights Project

Fair Trade Advocacy Office

Solidaridad

Rainforest Alliance

European Environmental Bureau (EEB)

Centre for Research on Multinational Corporations (SOMO)

Initiative Lieferkettengesetz

Observatorio de Responsabilidad Social Corporativa

Asociación Pro Derechos Humanos de España (APDHE)





Solidaridad



RAINFOREST ALLIANCE



OBSERVATORIO DE RESPONSABILIDAD SOCIAL CORPORATIVA

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